

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **ANGEL L. DE JESUS-MARTINEZ,**

4 Plaintiff,

5 v.

CIVIL NO. 04-2227 (JAF)

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7 **COMMISSIONER OF SOCIAL**
8 **SECURITY,**

9 Defendant.

10 **REPORT AND RECOMMENDATION**

11 This case at bar was brought before the Court pursuant to the Social Security Act's¹ ("Act")
12 judicial review provision, which expressly authorizes any individual who requests disability benefits
13 from the Commissioner of Social Security, but whose request has been denied, to seek review of said
14 decision pursuant to 42 U.S.C. § 405 (g). After reviewing the transcript of the record and the parties
15 memoranda of law (Docket Nos. 9 and 11), the Court **RECOMMENDS** that case be **REMANDED**.

16 **I. STANDARD OF REVIEW**

17 Judicial review of the Commissioner of Social Security's denial of disability benefits is
18 limited in scope. The Court's only tasks are to ensure that the final decision is supported by
19 substantial evidence and whether the correct legal standard was used. 42 U.S.C. § 405 (g); see
20 Seavey v. Barnhart, 276 F. 3d 1, 9 (1ST Cir. 2001). The term "substantial evidence" means "such
21 relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
22 Richardson v. Perales, 402 U.S. 389, 401 (1971). If the Court finds the determination to be supported
23 by substantial evidence of record, the Commissioner's findings must be upheld, even if the Court
24 disagrees with them or, had found otherwise under a *de novo* standard of review. See Lizotte v.
25 Secretary of Health and Human Servs., 654 F. 2d 127, 128 (1ST Cir. 1981). However, the
26 Commissioner's findings are not conclusive "when derived by ignoring evidence, misapplying the
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¹42 U.S.C. § 405 *et seq.*

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2 law, or judging matters entrusted to experts.” Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999).

3 **II. FINDINGS OF THE ADMINISTRATIVE LAW JUDGE**

4 After evaluating the evidence of record, the Administrative Law Judge (“ALJ”) made the
5 following findings (Tr. 21-22) in his decision denying plaintiff disability benefits:

- 6 1. The claimant met the non-disability requirements for a period of disability and
7 Disability Insurance Benefits set forth in Section 216(I) of the Social Security Act
8 at the alleged onset date of disability and was insured for benefits through December
9 31, 2000.
- 10 2. The claimant has not engaged in substantial gainful activity since the alleged onset
11 of disability.
- 12 3. The claimant’s back disorder and spondylosis were considered “severe” based on the
13 requirements in the Regulations 20 C.F.R. §404.1520 (c).
- 14 4. These medically determinable impairments did not meet or medically equal one of
15 the listed impairments in Appendix 1, Subpart P, Regulation No. 4.
- 16 5. The undersigned finds the claimant’s allegations regarding his limitations are not
17 totally credible for the reasons set forth in the body of the decision.
- 18 6. For the period at issue, the claimant has the residual functional capacity to lift, carry,
19 push and pull a maximum of twenty pounds at a time and frequently lift or carry up
20 to ten pounds, stand and walk for five hours and sit for six hours in an eight-hour
21 work period alternating postural positions at will. The claimant retained the capacity
22 to perform simple, routine and repetitive tasks in a sustained manner.
- 23 7. The claimant was unable to perform any of his past relevant work 20 C.F.R. §
24 404.1565).
- 25 8. The claimant was a “younger individual between the ages of 18 and 44” (20 C.F.R.
26 404.1563).
- 27 9. The claimant has a “high school (or high school equivalent) education” (20 C.F.R.
28 § 404.1564).

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2 10. The claimant has no transferable skills from any past relevant work and/or
3 transferability of skills is not an issue in this case (20 C.F.R. § 404.1568).

4 11. For the period at issue, the claimant had the residual functional capacity to perform
5 a significant range of light work (20 C.F.R. § 404.1567).

6 12. Although the claimant's exertional limitations did not allow him to perform the full
7 range of light work, using Medical-Vocational Rule 202.20 as a framework for
8 decision-making, there were a significant number of jobs in the national economy
9 that he could perform. Examples of such jobs include work as electronic worker,
10 existing 930 in Puerto Rico and 285 in the area where the claimant lived, and small
11 products assembler II, existing 1,300 in Puerto Rico and 280 in the area. Both jobs
12 were light in physical demands and unskilled in functions and allowed the claimant
13 to alternate postural positions at will.

14 13. On or before December 31, 2000, the date when he was last insured, the claimant
15 was not under a "disability," as defined in the Social Security Act (20 C.F.R. §
16 404.1520 (g)).

17 **III. PLAINTIFF'S ARGUMENT ON ADMINISTRATIVE REVIEW**

18 Plaintiff Angel L. De Jesús-Martínez ("De Jesús-Martínez") alleges on administrative review
19 that the Commissioner's ruling is not supported by substantial evidence. *Plaintiff's Memorandum*
20 *of Law*, p. 2-6 (Docket No. 11). In addition, De Jesús-Martínez alleges that her complaints of pain
21 were not adequately addressed. *Id.*, 7-9.

22 **IV. LEGAL ANALYSIS**

23 As stated above, the standard of review of the Commissioner's decision is whether the
24 determination made is supported by substantial evidence. 42 U.S.C. §§ 405(g), 1383(c)(3). In
25 reviewing the record for substantial evidence, the Court is guided by the mandate that "issues of
26 credibility and the drawing of permissible inference from evidentiary facts are the prime
27 responsibility of the Secretary." *Richardson*, 402 U.S. at 399. The resolution of conflicts in the
28 evidence and the determination of the ultimate question of disability is for the Secretary, not for the

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2 doctors or for the Courts. Id.; see also Lizotte v. Secretary of Health and Human Services, 654 F.2d
3 127, 128 (1st Cir. 1981); Rodríguez, 647 F. 2d at 222; Alvarado v. Weinberger, 511 F.2d 1046, 1049
4 (1st Cir. 1975) (per curiam).

5 The Commissioner ultimately denied De Jesús-Martínez' request for benefits, concluding
6 that his Residual Functional Capacity ("RFC") assessment, along with the testimony of a vocational
7 expert, evidenced his ability to perform "a significant range of light work". (Tr. 22). In so doing, the
8 ALJ, and hence the Commissioner, based his conclusions on an RFC performed by a non-examining
9 physician (Tr. 249), a practice frowned upon by the First Circuit. See Browne v. Richardson, 468
10 F. 2d. 1003 (1ST Cir. 1972). Where a claimant, as here, has objective medical symptoms of disability,
11 the ALJ is required by the law of this Circuit to rely on the RFC evaluation of a treating or
12 examining medical expert. See Heggarty v. Sullivan, 947 F. 2d. 990, 997 n. 1 (1ST Cir. 1991);
13 Rivera-Figueroa v. S.H.H.S., 858 F. 2d. 48, 52 (1ST Cir. 1988); Rivera-Torres v.S.H.H.S., 837 F. 2d.
14 4, 7 (1ST Cir. 1988).

15 In the case at bar, the record contains vast evidence as to De Jesús'-Martínez' lumbar
16 spondylosis and the resulting pain. (Tr. 165, 168, 172, 178-79, 184, 262, 291, 297). The medical
17 evidence also establishes that De Jesús-Martínez suffered from anterior osteophytosis, facet
18 hypertrophy, and neural foraminal encroachment at the L5-S1 level. (Tr. 168). Moreover, the record
19 clearly shows that the claimant experienced pain to pressure of the back muscles, inhibited trunk
20 flexion, muscle spasms, and gait problems. (Tr. 172, 262, 293, 295). In light of these symptoms, the
21 ALJ was required by First Circuit case law to base his RFC assessment on the opinion of a treating
22 or examining physician, which he did not.

23 Moreover, the denial of benefits does not adequately address De Jesús-Martínez' complaints
24 of pain, which were sufficiently supported by the above-mentioned evidence. Instead, the ALJ
25 merely brushed aside said allegation, based on the claimant's alleged ability to perform every-day
26 activities, such as receiving visitors and watching television. (Tr. 19). The Court opines that the
27 evidence of record required a more developed explanation as to what basis was considered by the
28 ALJ to discredit the seemingly overwhelming evidence to the contrary. This explanation must take

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2 into consideration a proper RFC assessment, which was lacking here.

3 **V. CONCLUSION**

4 _____After reviewing the appellant's administrative record, the ALJ's findings, the parties
5 memorandum of law (Docket Nos. 9 & 11), and the applicable law, the Court finds that the
6 Commissioner's denial of benefits and a period of disability was not supported by substantial
7 evidence in so much as the record does not contain an RFC performed by an examining/treating
8 physician, and De Jesús-Martínez' allegations of disabling pain were not properly addressed in the
9 ALJ's denial. Consequently, the Court hereby **RECOMMENDS** that the case be **REMANDED**
10 so that the Commissioner for further proceedings consistent with the Court's findings.

11 Under the provisions of 28 U.S.C. § 636 and Rule 72 (d), Local Rules, District of Puerto
12 Rico, any party who objects to this report and recommendation must file a written objection thereto
13 with the Clerk of the Court within ten (10) days of the party's receipt of this report and
14 recommendation. The written objections must specifically identify the portion of the
15 recommendation, or report to which objection is made and the basis for such objections. Failure
16 to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155
17 (1985), reh'g denied, 474 U.S. 1111 (1986); Davet v. Maccorone, 973 F. 2d 22, 30/31 (1st Cir.
18 1992).

19 **IT IS SO RECOMMENDED**20
21 **Date: April 15, 2005**

22 **S/ Gustavo A. Gelpí**
GUSTAVO A. GELPI
U.S. Magistrate Judge